ALEC American Legislative Exchange Council

LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

ENVIRONMENTAL HEALTH SUBCOMMITTEE MEETING

2014 STATES & NATION POLICY SUMMIT
WASHINGTON, D.C.
DECEMBER 4, 2014
4:00 PM – 4:45 PM

TENTATIVE AGENDA

4:00 PM	Call to Order, Welcome, and Introductions
4:05 PM	Presentation: Big Green Radicals *Jack Hubbard, Berman and Company*
4:20 PM	Model Policy: ALEC Environmental Management and Protection Principles
4:30 PM	Presentation: Extended Producer Responsibility *Kevin Canan, Product Management Alliance*
4:45 PM	Adjournment

Jack Hubbard

Vice President
Berman and Company

Jack Hubbard is a Vice President at Berman and Company, a full-service research and communications firm located in Washington, DC. Berman and Company consistently excels in getting its clients' and donor messages placed before the public through aggressive media outreach. Berman and Company spokespeople regularly appear on television and radio programs and place over 250 Opinion Editorials in major newspapers every year. Berman and Company recently launched "Big Green Radicals", a public education campaign designed to expose the radical nature of the anti-energy activist movement. Prior to Berman and Company, Hubbard was employed by the United Bank of Switzerland and graduated from Davidson College.

Kevin Canan

Executive Director
Product Management Alliance

Kevin Canan is the Executive Director of the Product Management Alliance ("the PMA") and the founder of MainStreet Advocates ("MSA"). The PMA is a coalition comprised of trade associations and corporations that represent a broad array of consumer products and our mission is to support market-based extended producer responsibility (EPR) efforts, as well as voluntary incentives for increased recovery and sustainable products and package design. MSA is a Washington, D.C. based state and local government boutique consulting firm that assists clients in devising and executing advocacy strategies aimed at successfully achieving their goals interacting with state and local government across the country. Mr. Canan is also an attorney who has over 20 years of government relations, government, public policy, campaign and legal experience. He has worked for numerous local, state and federal elected officials. He was named a "rising star" in both 2006 and in 2007 by the publishers of Law & Politics and Super Lawyers magazines.

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LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

ENERGY, ENVIRONMENT AND AGRICULTURE TASK FORCE MEETING

2014 STATES & NATION POLICY SUMMIT
WASHINGTON, D.C.
DECEMBER 5, 2014
2:30PM – 5:30PM

TENTATIVE AGENDA

2:30 PM	Call to Order, Welcome and Introductions
2:35 PM	Presentation: The Federal Endangered Species Act *Hon. Susan Combs, Texas Comptroller of Public Accounts*
2:50 PM	Model Policy: State Endangered Species Conservation and Coordination Act
3:00 PM	Presentation: Toxic Substances Control Act (TSCA) Reform and Chemical Policy Update *Andrew Hackman, Serlin Haley LLP* *Josh Young, American Chemistry Council*
3:15 PM	Presentation: Section 111(d) and the Path Forward: The Role of State Agencies and Officials *Ted Cromwell, National Rural Electric Cooperative Association* *Hon. Jeremy Oden, Alabama Public Service Commission*
3:45 PM	Model Policy: Act Requiring Approval of State Plan to Implement EPA's Carbon Guidelines
3:55 PM	Model Policy: The Reliable, Affordable and Safe Power (RASP) Act
4:05 PM	Presentation: Ozone National Ambient Air Quality Standards (NAAQS) *William Yeatman, Competitive Enterprise Institute*
4:20 PM	Model Policy: Resolution Supporting Reasonable Reconsideration of the National Ambient Air Quality Standard for Ozone
4:25 PM	Model Policy: Resolution Supporting a Robust 2017-2022 Outer Continental Shelf Leasing Program
4:30 PM	Presentation: Expanding Markets for Coal *Ross Eisenberg, National Association of Manufacturers*
4:45 PM	Model Policy: ALEC Environmental Management and Protection Principles
4:50 PM	Model Policy: Resolution Demanding Congress Replace the Environmental Protection Agency
5:00 PM	Presentation: Taxes and Energy: The Importance of Cost Recovery *Will McBride, Tax Foundation*
5:15 PM	Annual Model Policy Review
5:25 PM	For the Good of the Order
5:30 PM	Adjournment

Energy, Environment and Agriculture Task Force Meeting
Speakers

Hon. Susan Combs

Comptroller of Public Accounts
State of Texas

Texas Comptroller of Public Accounts Susan Combs is committed to making state government work better for all Texans, through open, responsive and transparent government. As the state's treasurer, check writer, tax collector, procurement officer and revenue estimator, Combs brings a fiscally conservative philosophy to her office. Since being elected Texas Comptroller in 2006, Combs has enacted sweeping reforms in state purchasing and contracting, saving nearly $12 million in her agency alone. She has worked for many years to help Texas military installations conduct critical operations in the face of increased endangered species regulation. As presiding officer of the statewide Interagency Task Force on Economic Growth and Endangered Species, she maintains the Keeping Texas First website, which tracks the economic impacts of federal environmental regulation and provides valuable information on the process to affected communities. She also secured the nation's first science fund aimed at gathering data on at-risk species.

Andrew Hackman

Firm Member
Serlin Haley LLP

Andrew Hackman is a registered federal lobbyist who has testified before the U.S. Senate and lobbied in over 25 state capitols. Prior to joining Serlin Haley, he served as vice president of government affairs for the Toy Industry Association, where he oversaw TIA's advocacy programs at both the state and federal levels. Mr. Hackman has also directed the national government affairs program of the Consumer Specialty Products Association. Mr. Hackman received a Bachelor's of Science in Public Affairs from Indiana University's School of Public and Environmental Affairs in Bloomington, Indiana and a Masters of Business Administration from George Washington University in Washington, D.C.

Ted Cromwell

Senior Principal, Environmental Quality
National Rural Electric Cooperative Association

Ted Cromwell is a Senior Principal of Environmental Quality at the National Rural Electric Cooperative Association (NRECA). He has previously worked as a Senior Compliance Officer at the U.S. Department of Homeland Security and Senior Director of Regulatory Affairs at the American Chemistry Council. He holds a Bachelor's degree from James Madison University.

Hon. Jeremy Oden

Commissioner
Alabama Public Service Commission

Jeremy H. Oden was recently appointed to the Place 1 vacancy on the Alabama Public Service Commission (PSC) by Governor Robert J. Bentley at the beginning of December 2012. The seat was vacated by Twinkle Andress Cavanaugh upon her election to the PSC Presidency in November 2012. Before joining the PSC, Oden was elected as member of the Alabama House of Representatives. He was first elected to the State House in 1998 and served as State Representative, as a lifelong member of the Republican Party, for House District 11, covering portions of Cullman, Blount and Morgan Counties.

Prior to coming to the PSC, Oden entered the financial industry and worked as a branch manager and Vice President for Eva Bank in Cullman County. He was a small business owner, primarily involved in the construction industry. Oden is a proud Christian and an ordained minister. He holds a Bachelor's degree from Asbury College.

William Yeatman

Senior Fellow
Competitive Enterprise Institute

William Yeatman is CEI's senior fellow specializing in energy policy and global warming.
His commentary has been widely featured in newspapers from coast to coast and also on nationwide television and radio. Yeatman has twice testified before congress and numerous times before state legislatures. Prior to joining CEI, he was a Peace Corps volunteer in the Kyrgyz Republic, where he taught entrepreneurship and small business management to rural women. Before that, he ran a homeless shelter in Denver, Colorado. He holds a Masters in International Administration from the Denver University Graduate School of International Studies and a Bachelor's in Environmental Sciences from the University of Virginia

Ross Eisenberg

Vice President, Energy and Resources Policy
National Association of Manufacturers

Ross E. Eisenberg is vice president of energy and resources policy at the National Association of Manufacturers, the largest industrial trade organization in the United States, representing over 13,000 small, medium and large manufacturers in all 50 states. Ross oversees the NAM's energy and environmental policy work, and has expertise on issues ranging from energy production and use to air and water quality, climate change, energy efficiency and environmental regulation. Before coming to NAM in 2012, Ross spent over five years as environmental and energy counsel at the U.S. Chamber of Commerce, the world's largest business federation. He was also executive for the Chamber's Environment & Energy Committee, the Chamber's primary vehicle for the creation and development of environmental and energy policy. Eisenberg has a B.A. from Emory University and a J.D. from Washington & Lee University School of Law.

Will McBride

Chief Economist
Tax Foundation

William McBride is Chief Economist at the Tax Foundation. He holds a Ph.D. in economics from George Mason University, where his dissertation involved using agent-based modeling and simulation to analyze the effect of various banking regimes, including free banking, on asset prices. While at George Mason, William was a research assistant at the Interdisciplinary Center for Economic Science, which was established by Nobel laureate Vernon Smith as a center for research in experimental economics.
In addition to these areas, William's research interests are broad, including public choice, public finance, industrial organization, history of thought, and the economics of religion. He has taught microeconomics at George Mason's economics department and managerial economics at the School of Public Policy. He also has a bachelor's degree in physics and electrical engineering and worked as a software engineer for seven years.

Depreciation, Expensing and Investment

By William McBride
Chief Economist, Tax Foundation

- The corporate and personal income taxes are taxes on business profits, where profits are defined as revenue minus costs. While labor costs are immediately deductible (expensed), capital costs generally are not. Instead, the costs of capital goods such as equipment, software, and buildings, are depreciated, meaning the deductions are stretched out over a number of years or decades without any adjustment for inflation or the time value of money. This grossly overstates real profits, and thus over-taxes business, particularly business investment.

- The current system of depreciation is the Modified Accelerated Cost Recovery System (MACRS), which has been in place since 1986. It requires businesses to delay the write-off of buildings for as long as 39 years, with no adjustment for inflation or the time value of money. In present value terms, businesses are only allowed to deduct about half the cost of buildings. Equipment and software can be written off over a period of 3 to 20 years, depending on the asset, the use, and the industry. In present value terms, about 85 percent of the cost of equipment and software is deductible. It is all exceedingly complicated and costly for businesses to comply with.

- As a result, most economists who study this recommend full expensing of capital, i.e. the same treatment that labor gets. Our estimates indicate that over the long-run, full expensing would increase GDP over 5 percent, lift the capital stock by over 15 percent, raise wages by over 4 percent, and create about 900,000 full-time jobs.

- Unfortunately, many tax reform proposals lately have proposed going the opposite direction, away from expensing. The Alternative Depreciation System (ADS) is often proposed as a way to "pay for" a lower business tax rate. ADS would stretch out asset lives for tax purposes in a vain attempt to achieve "economic depreciation." Nobody knows how millions of types of equipment, software and buildings economically depreciate. Trying to write it into the tax code is pure folly.

- We estimate that ADS would decrease GDP by almost 2 percent, the capital stock by over 5 percent, and wages by over 1 percent. Using it to "pay for" a rate cut would backfire, resulting in a direct hit to new investment in order to spread a rate cut over both old and new investment. The combination would shrink GDP, capital and wages.

The Tax Foundation is a 501(c)(3) non-partisan, non-profit research institution founded in 1937 to educate the public on tax policy. Based in Washington, D.C., our economic and policy analysis is guided by the principles of sound tax policy: simplicity, neutrality, transparency, and stability.

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TAX FOUNDATION Since 1937

LIFO versus FIFO Accounting

By William McBride

Chief Economist, Tax Foundation

- Last-in-first-out (LIFO) is an established inventory accounting method in use for over 70 years. The alternative is first-in-first-out (FIFO). LIFO is used by 36% to 40% of businesses with inventories.

- In a rising cost environment, LIFO more closely reflects actual cost. This matters particularly for industries that hold inventories for years or decades, e.g. manufacturers with long production processes.

- The ultimate problem is that businesses are not allowed to immediately deduct (expense) capital costs, including inventory, and instead must use depreciation for tax purposes. Without expensing, the cost of goods in inventory are not deductible until sold, sometimes years or decades later. That's wrong, as it overstates real income for tax purposes.

- FIFO exacerbates that problem by requiring original prices to be used for inventory deductions, regardless of inflation or any other factor that increases costs.

- FIFO is just an arcane way to raise taxes on a segment of businesses. The Joint Committee on Taxation estimates repeal of LIFO would raise $1.5 to $2 billion a year.

- Taxing LIFO "reserves", the accumulated difference between LIFO and FIFO deductions, means retroactively taxing activity that occurred years or decades ago. The Obama administration has proposed this and estimated it would raise about $74 billion over 10 years. Most companies do not have that kind of money lying around, causing many to liquidate important assets, lay off workers, or go completely bankrupt.

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CONVENTION OF STATES

After you hear Mark Levin discuss a Convention of States at this morning's breakfast, don't miss the chance to talk with some of the nation's leading constitutional scholars as they explore a Convention of States in more detail.

*Please join constitutional attorney **Michael Farris**, Article V expert Professor **Robert Natelson**, Georgetown Law school Professor **Randy Barnett** and invited speaker U.S. Senator **Tom Coburn** for a lively, informative discussion about Article V of the Constitution. In light of the results from the 2014 elections, the states are uniquely positioned to adopt a united Article V effort, and reclaim their power from the federal government. Learn about the mechanics of interstate conventions, the growing public momentum behind Article V, and critical importance of uniting the states to stop the federal government's abuse of power.*

Where: Hyatt Regency Washington,
Capitol A-B

When: December 4^{th}

Workshop: 9:30am – 10:45am

To find out more about the Convention of States Project, please visit our website at www.conventionofstates.com, or call our national office at 540-441-7227.

CITIZENS FOR SELF-GOVERNANCE

EPA's CO_2 Rules and the Cooperative and Municipal Question

Regulatory Issues Implicated by the Proposed Rule

October 2014

Raymond L. Gifford
Gregory E. Sopkin
Matthew S. Larson

WILKINSON) BARKER) KNAUER) LLP

Executive Summary

Limited or lack of jurisdiction over cooperatives and municipal utilities for activities covered by all Building Blocks presents significant implementation and enforcement hurdles. While cooperatives and municipalities that own and/or operate generation are subject to air quality regulations under the auspices of the state environmental regulator, few are subject to enforceable renewable energy mandates or energy efficiency requirements absent specific state legislation.

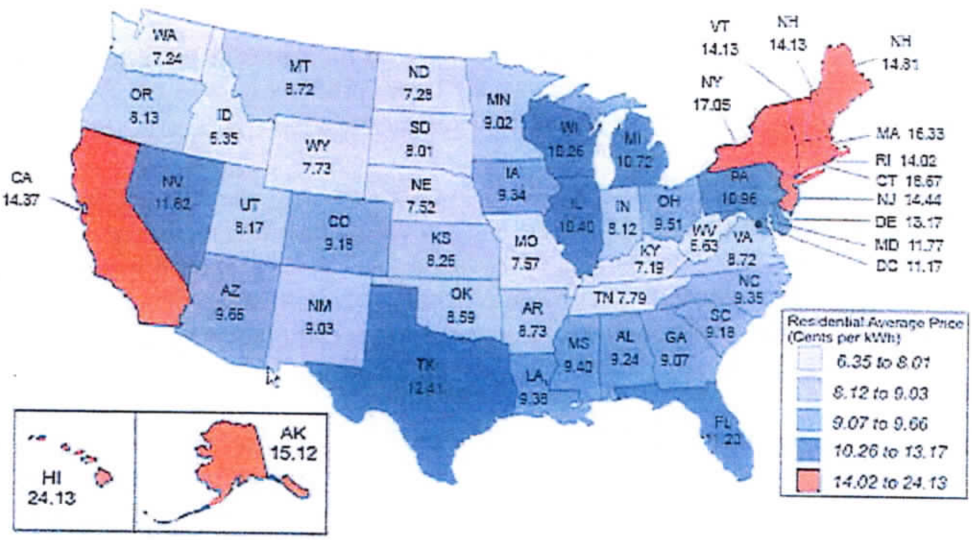
Many cooperatives and municipal utilities are not subject to enforceable state-level resource planning processes, which effectively proscribes the ability of state regulators to look at their activities holistically as required by the proposed CO_2 Emission Guidelines. At its core, given EPA's broad construction of the best system of emission reduction under Section 111(d), the proposed CO_2 Emission Guidelines function as an energy policy rather than a traditional Clean Air Act rule. This makes the state-level resource planning agency, *i.e.*, the PUC, the most appropriate forum in which to consider actions that fall under all Building Blocks holistically and in concert with one another. Most state PUCs lack this authority under existing state law.

A case study of Colorado illustrates the regulatory fragmentation with respect to cooperatives and municipal utilities. While the state environmental regulator has emission control authority for Building Block 1-related activities by affected generators, the state PUC has varying levels of resource planning authority and other regulatory authority over investor-owned utilities, cooperatives and municipalities. Investor-owned utilities are subject to significant PUC oversight and enforcement with regard to resource planning, RPS, and energy efficiency compliance; cooperatives and municipal utilities are subject to relaxed or no regulation in these areas. The Colorado conundrum suggests the need for comprehensive state legislation to implement an enforceable state Section 111(d) plan in many other states.

New state-level regulation of cooperatives and municipal utilities would override decades of regulatory precedent and directly conflict with the core purposes of cooperatives and municipal utilities. The cooperative and municipal utility 'DNA' centers on self-governance and local control - and with it - the ability to provide affordable and reliable power to members. These principles are reflected in comments on the proposed CO_2 Emission Guidelines by cooperatives and municipalities in various public forums and proceedings.

EPA's CO_2 Rule and 18 States' Resolutions and Legislation

EPA's Proposed CO_2 Rule Collides
with Flexibility Asserted By States



August 2014

Raymond L. Gifford
Gregory E. Sopkin
Matthew S. Larson

WILKINSON) BARKER) KNAUER) LLP

Executive Summary

18 state legislatures passed either legislation or resolutions that EPA has rejected in its CO_2 Emission Guidelines. The states demanded that the EPA respect state primacy in setting performance standards under Section 111(d) and/or allow the state maximum flexibility to implement carbon standards, including allowing a more lenient standard and schedule based on the state's unique circumstances or cost or reliability factors.

EPA's CO_2 Emission Guidelines sets firm carbon reduction standards that must be met by each state beginning in 2020 and accelerating through 2030, and excludes "case by case" exceptions based on factors discussed in federal implementing regulations. These factors include: (1) unreasonable costs of control resulting from plant age, location, or basic process design; (2) the physical impossibility of installing necessary control equipment; or (3) other factors that make application of a less stringent standard or final compliance time significantly more reasonable.

The EPA CO_2 Emission Guidelines do not allow states to set their own carbon performance standards. This ignores the fact that states believe they have primacy pursuant to Section 111(d) in determining what standards should apply based on unique state circumstances.

According to EPA Administrator McCarthy, unless a state can show that EPA's data related to its four building block approach is flawed, EPA will not entertain a less stringent carbon reduction target. However, the state-specific data provided in EPA's proposed rule relates to meeting the carbon reduction standard, not cost or reliability. This does not afford states the opportunity to request EPA consideration of a less stringent standard based on cost or reliability factors.

The majority of states enacting resolutions or legislation regarding Section 111(d) would limit the carbon reduction standard to what is reasonably achievable inside the fence, i.e., at the EGU source. However, three of EPA's four building blocks reside outside the fence, and EPA's CO_2 Emission Guidelines do not allow for a state to deviate from its carbon reduction mandate by analyzing what is achievable at the source.

States have directed their environmental agencies to consider less stringent carbon reduction standards and compliance schedules based on cost; effect on electric rates, jobs, low-income populations, and the economy; effect on reliability of the system; engineering considerations; and other factors unique to the state. Based on language in the CO_2 Emission Guidelines, it does not appear that EPA will entertain variance requests that are based on any of these factors.

States that passed resolutions or legislation inconsistent with the EPA's CO_2 Emission Guidelines will not be able to comply with both legislatively-expressed declarations and EPA's mandate. EPA will either choose to revise its proposed rule to respect the rights asserted by the states, or reject these state assertions and invite litigation. States are then left in the impossible dilemma of ignoring state law to follow EPA's prescribed mandate, which would, by definition, be an illegal act by a state agency.

EPA's CO_2 Rules and the State Institutional Problem

Legislative and Regulatory Complexities for Existing State Institutions

September 2014

Version 1.1

Raymond L. Gifford
Gregory E. Sopkin
Matthew S. Larson

WILKINSON) BARKER) KNAUER) LLP

Executive Summary

New institutional approaches and state legislation are needed to implement EPA's proposed rule. For a state that wants to use Building Blocks 2, 3 and 4 to meet its carbon budget, the legislature will need to authorize a new unified carbon IRP to implement a fully enforceable state plan. States will need to devise new institutional approaches involving something of a hybrid between an environmental/air regulator and a traditional utility regulatory commission.

An interagency pledge to 'work together' is necessary but not sufficient to comply with the proposed rule. EPA's approval criteria render such a casual approach unworkable. In the absence of state legislation marrying regulatory authority to allow for the collective enforcement of a state plan, states cannot implement all facets of the rule. Cooperation between state agencies is necessary, but not sufficient, to devise an enforceable rule.

State environmental/air regulators only have existing authority to implement a source-based program. A source-based approach under the auspices of the state environmental regulator turns energy policy, with attendant considerations of reliability, cost and other factors, over to a regulatory body that lacks the specific expertise of state PUCs. The generation fleet alone bears the full burden of all CO_2 emission reductions under this approach.

A Building Block 1-only plan is EPA's most potent avenue to force states to shutter carbon-intensive generation. If a state Section 111(d) plan is disapproved, then EPA will most likely impose a Building Block 1-only plan. In turn, a Building Block 1-only plan creates incentives to retire certain carbon-intensive generation units in an effort to preserve others. This, however, creates intrastate rivalries between generators as to what units get shuttered and whose customers bear the cost. An intrastate compensation mechanism will need to be devised to resolve the equities of a Building Block 1-only plan.

An 'assumed authority' approach for air regulators to enforce outside-the-fence reduction measures without state legislation is legally and practically perilous. The idea of a carbon IRP or general carbon planning process driven solely by the environmental/air regulator may at first seem attractive, but carries unsupportable risks for utilities and customers. Most importantly, it obviates the traditional role and expertise of PUCs, which also are the agencies that have the responsibility to determine regulated utility cost increases associated with the carbon IRP.

EPA's CO_2 Rules and the Cooperative and Municipal Question

Regulatory Issues Implicated by the Proposed Rule

October 2014

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MODEL PROVISIONS FOR STATE RESOLUTIONS OR STATUTES REGARDING THE CLEAN POWER PLAN

(Modules Available for Use Given Specific Needs/Position of States)

Summary: The following modules are set forth in two tiers and serve as model provisions for state legislation regarding the Clean Power Plan in upcoming state legislative sessions. The two tiers are as follows:

- Tier 1: Recitations and resolution language modules setting forth requests from state legislative bodies to Congressional delegations to oppose the proposed rule, support any and all legal and legislative avenues to effectuate the withdrawal of the proposed rule.

- Tier 2: Statutory provisions setting forth an increased role for state public utility commissions in the development of a Section 111(d) state plan; requiring an adjudicatory process in the development of any Section 11(d) state plan; and/or mandating the approval of any Section 111(d) state plan by both chambers of the state legislature.

Contact: To request further information or an electronic copy of these modules please contact:

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TIER 1 MODULES

RECITATIONS

GENERAL RECITATION MODULE:

WHEREAS, a reliable and affordable electricity supply is vital to the nation's and each state's economic growth, jobs, and the overall well-being of its citizens; and

WHEREAS, under its sovereignty and the protections of the 10th Amendment, it is the sole authority of each state to regulate as necessary to ensure a reliable and affordable supply of electricity for its citizens; and

WHEREAS, environmental regulations should be based on sound science and a transparent and comprehensive program that addresses environmental issues, the nation's broader economic prosperity, and the long-term energy affordability for citizens; and

WHEREAS, the regulation of retail electricity sales and local distribution of electricity is a sovereign State function that federal agencies have a legal obligation to respect and preserve; and

WHEREAS, on June 25, 2013, the President issued a memorandum to the Administrator of the U.S. Environmental Protection Agency (EPA) directing the EPA to develop guidelines to control greenhouse gas emissions from existing fossil fuel-fired power plants under Section 111(d) of the federal Clean Air Act and to seek input from states; and

WHEREAS, on June 2, 2014, the EPA issued proposed guidelines limiting carbon dioxide(CO2) emissions from existing fossil fuel-fired power plants under Section 111(d) of the federal Clean Air Act ("proposed rule") and published them for comment in the Federal Register on June 16, 2014; and

WHEREAS, the EPA, under the Clean Air Act (CAA), claims authority to regulate greenhouse gases by utilizing Section 111(d) to regulate carbon dioxide performance standards for Existing Generating Units (EGUs) when those plants are already regulated under Section 112's air toxics program; and

WHEREAS, the EPA has admitted this proposed rule will not measurably alter any impacts of climate change; and

WHEREAS, the EPA has admitted that its interpretation of section 111(d) of the CAA relied upon in support of the proposed rule conflicts with a literal reading of the law and acknowledged that this application of the CAA "'would have been unrecognizable to the Congress that designed' the governing statutory framework;" and

WHEREAS, the Clean Air Act does not authorize EPA to mandate implementation of "outside of the fence" elements of a state's implementation of the proposed rule with respect to retirement or operation of coal fired electricity generating units, the reliance on generation of electricity

from natural gas, the reliance on renewable energy sources, or the energy efficiency or demand management of end-users, each of these exclusively within the police powers of the state; and

WHEREAS, the proposed rule is based on the EPA's assessment of each state's ability to improve the efficiency of coal-fired electric generating units, retire or operate differently coal fired electric generating units, substantially increase the generation of electricity from natural gas, significantly increase reliance on renewable energy sources, and substantially reduce the use of electricity by consumers, all in a plan and on a schedule that is not achievable and workable; and

WHEREAS, the Governor, Attorney General, Public Utility Commission, and state environmental agency of **{state}** have sent comments to the Environmental Protection Agency expressing concern with implementation of the rule; and

WHEREAS, the proposed rule would effectively amount to a federal takeover of the electricity system of the United States; and

WHEREAS, the proposed guidelines and plan, by the EPA's own estimates have a major impact on the economy of each state and significant consequences for how electricity is generated, transmitted, distributed, and used within each state.

STATE-SPECIFIC RECITATION MODULE

WHEREAS, EPA in the proposed rule mandates unique State-wide CO_2 emissions targets for each state, which dictate the average rate of CO_2 emissions a state can emit. This average rate of CO_2 emissions is based on an output-weighted-average pounds of CO_2 per net megawatt-hour (lb CO_2/MWh) from each state's electric generation fleet. For **{state}**, EPA has imposed an interim rate of at **{rate}**, lb CO_2/MWh, applicable annually on average from 2020-2029, and a final goal rate of **{rate}**, lb CO_2/MWh, applicable annually on average from 2030 onward; and

WHEREAS, **{ISO/RTO}** has determined that the budgets proposed for **{state}** will result in unacceptable reliability risks **{insert reliability risk projections},** and

WHEREAS, **{ISO/RTO}** has determined that the budgets proposed for **{state}** will result in unacceptable reliability risks **{insert reliability risk projections}** and increases in wholesale electricity prices of **{insert price increase projections** }, and

WHEREAS, other respected economic experts project that the increase in wholesale electricity price increases in **{state}** could exceed **{insert price increase projections}** with an annual economic impact **{insert economic impact projections}**

FOR STATES WITH SUB-900 LB/MMBTU BUDGETS:

WHEREAS, no fossil-fueled electric generation technology currently operating without subsidies at commercial scale in the world can meet EPA's proposed emission rate for **{state}**, if it were applied to individual facilities; and

RESOLUTION PROVISIONS

GENERAL RESOLUTION MODULE:

NOW THEREFORE BE IT RESOLVED, and as necessary in response to the EPA Clean Power Plan regulatory activity, the State Executive and Attorney General shall take appropriate steps to protect the State's sovereignty and police powers authorities in light of the designed federalism under the Clean Air Act; prevent federal commandeering of State police powers resources; retain authority to develop and submit to the EPA any plan for meeting the goals of reducing carbon dioxide emissions held to be legally mandated; and in so doing, the Legislature, while pursuing all opportunities to challenge this regulatory overhaul, shall protect the state's interests in the development of the state's plan, in consultation with the **{state agency}** and other important stakeholders.

BE IT FURTHER RESOLVED, the Governor of **{state}**, is authorized to notify the EPA that will not submit a State Implementation Plan (SIP) for implementation of the proposed rule and that the EPA lacks the authority to enforce the proposed rule through a Federal Implementation Plan (FIP) given the legal flaws identified above; and

BE IT FURTHER RESOLVED, that the State Executive and Attorney General shall request the State's Congressional delegation to take immediate action utilizing all available legal avenues to effect the withdrawal of the Proposed Rule;

PREREQUISITES FOR SIP RESOLUTIONS MODULES

WAIT FOR COMPLETION OF JUDICIAL RULE MODULE:

BE IT FURTHER RESOLVED, given the legal uncertainties identified herein, **{state agencies}** may examine the implications of preparing and implementing this rule but shall not prepare, draft, submit or implement an implementation plan under this rule or otherwise expend funds to do so until completion of judicial review as to the legality of a Clean Air Act Section 111(d) regulation for existing power plants has been fully resolved at law;

WAIT FOR LEGISLATURE MODULE:

BE IT FURTHER RESOLVED, **{state}** shall not expend funds to develop, submit, or implement a Clean Power State Implementation Plan until:

the State House and Senate committees having jurisdiction over the Clean Air Act, or an advisory committee appointed by these committees have:

a. affirmatively approved the plan; and
b. submitted a report on the impact on the affordability and reliability of the plan on commercial and residential consumers.
c. After consideration of these house and committee reports, the state legislature has approved the development, submittal, and implementation of the plan.

AGENCY PROCESS PREREQUISITES MODULE:

BE IT FURTHER RESOLVED, The State shall not adopt a Clean Power State Implementation Plan absent resolutions from both chambers of the State legislature that approve the Clean Power State Implementation Plan in consideration and evaluation of a **{public utility commission}** assessment of the effects of the state plan on:

(1) the electric power sector, including:

(A) the ability of the state to provide affordable electricity through diversified sources of electricity generation;

(B) the type and amount of electric generating capacity within the state that is likely to retire;

(C) stranded investment in electric generating capacity;

(D) potential risks to electric reliability within the state, including resource adequacy risks and transmission constraints; and (E) the amount by which retail electricity prices within the state are forecast to increase.

(2) electricity consumers within the state, including any disproportionate impacts of the electricity and other energy price increases on middle-income and lower-income households;

(3) employment within the state, including direct and indirect employment effects and jobs lost within affected sectors of the state's economy;

(4) economic development within the state, including effects on manufacturing, commercial, and other sectors of the state's economy;

(5) the competitive position of the state relative to neighboring states and other economic competitors; and

(6) state and local governments, including potential impacts resulting from changes in tax revenues; and

BE IT FURTHER RESOLVED, The **{public utility commission}** shall not allow electric generating units to be retired prior to end of their engineering or economic useful life if the unit is necessary to maintain the grid reliability specified by the Federal Energy Regulatory Commission (FERC) in its reliability standards or similar standards developed by state or regional reliability entities.

INSIDE-THE-FENCE ("BLOCK 1") SIP MODULE

BE IT FURTHER RESOLVED, the Governor of **{state}**, working in conjunction with **{state environmental commission}** and **{public utility commission** is authorized to work in cooperation with other states to develop a heat rate efficiency-based proposed alternative to the proposed rule (hereinafter, "inside-the-fence alternative") that would take effect no sooner than June of 2020 and only in the event that the EPA is not legally restrained from enforcing the proposed rule before that time. This inside-the-face alternative shall be developed based on the following:

(1) consideration of potential efficiency gains that could be cost-effectively accomplished at electric generating facilities without adversely impacting electric reliability or affordability in the State based on a survey of existing facilities taking into account fuel type and rank and the remaining useful life of the existing affected source to which such standard applies, consistent with 42 U.S.C. Section 7411(d);

(2) consideration of the State's interest in not disadvantaging facilities that net less electricity production than they would otherwise but for the operation of pollution control equipment; and

(3) consideration of whether implementation of additional efficiency projects would expose facilities to new source review that would impose additional regulatory burdens; and

INTERSTATE COMPACT (OR OTHER MULTI-STATE AGREEMENT) MODULE

RECITATIONS

WHEREAS, Article I, Section 10, Clause 3 of the Constitution of the United States provides states the power to enter into agreements or compacts with other states; and

WHEREAS, states may benefit from entering into an interstate compact or multi-state agreements for the purpose of jointly opposing the proposed rule and other federal regulatory actions that infringe on the states' police powers and otherwise violate federal law; and

WHEREAS, states may desire to have the United States Congress adopt into federal law provisions of an interstate compact that protect electricity consumers within the states from being exposed to significant rate increases due to EPA regulations without the express authority of Congress or the state's legislature;

RESOLUTIONS

NOW THEREFORE BE IT RESOLVED, that the legislature of **{state}** authorizes the Governor of **{state}** to enter into an interstate compact or other multi-state agreement to work in concert with other states in its pursuit of the actions described herein but may retain the right to refrain from the submittal of any SIP to implement the proposed rule or any other federal regulatory action deemed by the Governor to be in violation of federal law; and

BE IT FURTHER RESOLVED, that such interstate compact or multi-state agreement shall contain provisions that, if adopted by Congress, establish as a matter as a matter of federal law that no EPA regulation that is found by Congress to have the potential to increase electricity prices by more than 10 percent in any state may come into effect in that state without the express authorization of Congress or the legislature of that state; and

BE IT FURTHER RESOLVED, that such interstate compact or other multi-state agreement, may include the following actions to be taken by the states made a part to the compact or agreement:

(1) joint opposition of the proposed rule and other federal regulatory actions that infringe on the states' police powers and otherwise violate federal law;

(2) joint assessment of the adverse impacts of the proposed rule and other federal regulatory actions; and

(3) joint investigation of cost-effective inside-the-fence efficiency improvements that might be pursued by individual or multiple states on their own initiative in the event that "inside-the-fence" aspects of the proposed rule are deemed legal by courts of competent jurisdiction.

TIER 2 MODULES

<u>DETAILED PROCESS GOVERNING SIP DEVELOPMENT MODULES</u>

GENERAL AGENCY AUTHORITY PROVISIONS

The Administrator of the State air quality program, as the administrator for a state with one or more affected electric generating units that commenced construction on or before January 8, 2014, shall not submit a State plan to the U.S. Environmental Protection Agency pursuant to 40 C.F.R. § 60.5710 or any other guidelines developed in accordance with section 111(d) of the Clean Air Act unless such plan is approved by an order of the [State Public Utility Commission] and the plan is signed by a majority of the [commissioners] serving on the [State Public Utility Commission].

GENERAL AGENCY AUTHORITY PROVISIONS WITH JURISDICTIONAL LANGUAGE

The Administrator of the State air quality program, as the administrator for a state with one or more affected electric generating units that commenced construction on or before January 8, 2014, shall not submit a State plan to the U.S. Environmental Protection Agency pursuant to 40 C.F.R. § 60.5710 or any other guidelines developed in accordance with section 111(d) of the Clean Air Act unless such plan is approved by an order of the [State Public Utility Commission] and the plan is signed by a majority of the [commissioners] serving on the [State Public Utility Commission].

For purposes of considering the State plan and entering an order, the [State Public Utility Commission] shall have integrated resource planning jurisdiction over any and all electric generators and distributors within the State, including without limitation municipal utilities, cooperative electric associations, energy efficiency providers, and owners and operators of renewable or zero-emission electric facilities.

DETAILED PROCESS PROVISIONS

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) The EPA has proposed emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under section 111(d) of the federal Clean Air Act.

(2) These proposed guidelines will have a major impact on the economy of [State] by regulating how electricity is produced, transmitted, distributed, and consumed within [State].

(3) States are required to take the lead role in the regulation of existing fossil fuel-fired electric generating units under section 111(d) of the federal Clean Air

Act by developing plans for the establishment and implementation of performance standards for reducing carbon dioxide emissions from such units.

(4) The role of the United States Environmental Protection Agency is limited to establishing federal emission guidelines that assist the States in the development of their plans to regulate carbon dioxide emissions from existing fossil fuel-fired electric generating units and, in so doing, EPA must defer to the States as to how to regulate such units within their jurisdictions.

(b) PURPOSE.—The purpose of this Act is to ensure that the [State agency] receives approval from the [State legislature] for any plan to regulate carbon dioxide emissions from existing fossil fuel-fired electric generating units under section 111(d) of the federal Clean Air Act, prior to the [State agency] submitting any such plan to EPA.

SECTION 2. DEFINITIONS.

For purposes of this Act:

(1) COVERED ELECTRIC GENERATING UNIT.—The term "covered electric generating unit" means an existing fossil fuel-fired electric generating unit within the State that is subject to regulation under the federal emission guidelines;

(2) EPA.—The term "EPA" means the United States Environmental Protection Agency;

(3) [STATE AGENCY].—The term "[State agency]" means the [name of department or agency responsible for implementing the section 111(d) program];

(4) FEDERAL EMISSION GUIDELINES.—The term "federal emission guidelines" means any final rules, regulations, guidelines, or other requirements that the EPA may adopt for regulating carbon dioxide emissions from covered electric generating units under section 111(d) of the federal Clean Air Act;

(5) STATE.—The term "State" means the [name of State or Commonwealth]; and

(6) STATE PLAN.—The term "State plan" means any plan to establish and enforce carbon dioxide emission control measures that the [State agency] may adopt to implement the obligations of the State under the federal emission guidelines.

SECTION 3. CONTESTED CASE AND ADJUDICATORY PROCESS

(a) CONTESTED CASE.—

(1) [State agency] shall consider any State Plan as a contested case and give notice of to all interested persons. The notice must be in writing, set forth the agency action, inform the person of the right, procedure, and time limit to file a contested-case petition, and provide a copy of the agency procedures governing the contested case.

(2) The presiding officer shall give all parties a timely opportunity to file pleadings, motions, and objections. The presiding officer may give all parties the opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended, initial, or final orders.

(3) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall give all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(4) The presiding officer shall conduct an evidentiary hearing, and the evidentiary hearing must be open to the public.

(5) Any party, at the party's expense, may be represented by counsel or may be advised, accompanied, or represented by another individual.

(6) A presiding officer shall ensure that a hearing record is created that complies with this subsection. The decision in a contested case must be based on the hearing record and contain a statement of the factual and legal bases of the decision. The decision must be prepared electronically and made available in writing. The hearing record constitutes the exclusive basis for agency action in a contested case and must contain:

(i) a recording of each proceeding;

(ii) notice of each proceeding;

(iii) any prehearing order;

(iv) any motion, pleading, brief, petition, request, and intermediate ruling;

(v) evidence admitted;

(vi) a statement of any matter officially noticed;

(vii) any proffer of proof and objection and ruling thereon;

(viii) any proposed finding, requested order, and exception;

(ix) any transcript of the proceeding prepared at the direction of the agency; and

(x) any recommended order, final order, or order on reconsideration.

SECTION 4. ASSESSING IMPACTS OF STATE PLAN

In developing any State plan for regulating carbon dioxide emissions from covered electric generating units, the [State agency] shall prepare a report based on the decision in Section 3 that assesses the effects of the State plan on—

(a) The electric power sector, including—

(1) The ability of the State to provide affordable electricity through diversified sources of electricity generation;

(2) The type and amount of electric generating capacity within the State that is likely to retire or switch to another fuel;

(3) Stranded investment in electric generating capacity;

(4) Potential risks to electric reliability within the State, including resource adequacy risks and transmission constraints; and

(5) The amount by which retail electricity prices within the State are forecast to increase.

(b) Electricity consumers within the State, including any disproportionate impacts of electricity and other energy price increases on middle-income and lower-income households;

(c) Employment within the State, including direct and indirect employment effects and jobs lost within affected sectors of the State's economy;

(d) Economic development within the State, including effects on manufacturing, commercial, and other sectors of the State's economy;

(e) The competitive position of the State relative to neighboring States and other economic competitors; and

(f) State and local governments, including potential impacts resulting from changes in tax revenues.

SECTION 5. SUBMISSION OF STATE PLAN TO EPA.

The [State agency] shall not submit to EPA any State plan until—

(a) The [State agency], in consultation with the [State Public Utility Commission], has determined that the State plan will not result in—

(1) A retail rate increase that exceeds [five (5)] percent of the total average annual electric bill for any customer class; or

(2) A risk to electric reliability; and

(b) [Both chambers of the State legislature] have adopted resolutions that approve the State plan in accordance with the procedures specified in section 6.

SECTION 6. PROCEDURES FOR APPROVAL OF STATE PLAN.

(a) TRANSMITTAL TO STATE LEGISLATURE.—Not later than 15 days from the date of adoption of any State plan, the [State agency] shall transmit to [each chamber of the State legislature] a copy of the State plan and the accompanying report developed in accordance with section 3.

(b) VOTE ON STATE PLAN.—Upon receiving the State plan and accompanying report transmitted under subsection (a), [each chamber of the State legislature] shall vote on a resolution to approve the State plan after sufficient time has been provided to assess the State plan and accompanying report. The resolution shall be deemed approved by the [State legislature] if each [chamber of the State legislature] casts a majority of votes in favor of the resolution.

(c) SUBMISSION OF REVISED STATE PLAN.—If either [chamber of the State legislature] fails to approve a State plan under subsection (b), the [State agency] may submit a revised version of the State plan, with an accompanying revised report, to the [State legislature] for approval in accordance with the procedures specified under this section.

DETAILED PROCESS PROVISIONS WITHOUT RETAIL RATE INCREASE AND RELIABILITY DETERMINATION

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) The EPA has proposed emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under section 111(d) of the federal Clean Air Act.

(2) These proposed guidelines will have a major impact on the economy of [State] by regulating how electricity is produced, transmitted, distributed, and consumed within [State].

(3) States are required to take the lead role in the regulation of existing fossil fuel-fired electric generating units under section 111(d) of the federal Clean Air Act by developing plans for the establishment and implementation of performance standards for reducing carbon dioxide emissions from such units.

(4) The role of the United States Environmental Protection Agency is limited to establishing federal emission guidelines that assist the States in the development of their plans to regulate carbon dioxide emissions from existing

fossil fuel-fired electric generating units and, in so doing, EPA must defer to the States as to how to regulate such units within their jurisdictions.

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(3) [STATE AGENCY].—The term "[State agency]" means the [name of department or agency responsible for implementing the section 111(d) program];

(4) FEDERAL EMISSION GUIDELINES.—The term "federal emission guidelines" means any final rules, regulations, guidelines, or other requirements that the EPA may adopt for regulating carbon dioxide emissions from covered electric generating units under section 111(d) of the federal Clean Air Act;

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(3) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall give all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(4) The presiding officer shall conduct an evidentiary hearing, and the evidentiary hearing must be open to the public.

(5) Any party, at the party's expense, may be represented by counsel or may be advised, accompanied, or represented by another individual.

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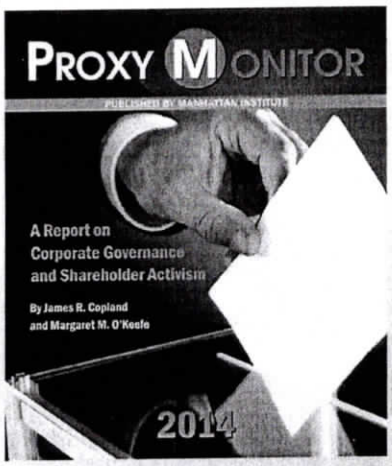
PROXY MONITOR



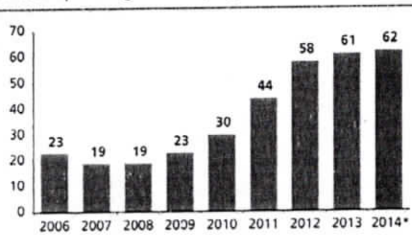
An Overview of the Shareholder-Proposal Process

- Any shareholder with $2,000 of a company's stock, held for one year, can file a shareholder proposal for inclusion on a company's proxy ballot
- Shareholder activists have gained power relative to boards in recent years

PROXY MONITOR

The Number of Shareholder Proposals Related to Political Spending or Lobbying Has Leveled Off But Continues to Increase

Figure 8. Number of Shareholder Proposals Relating to Political Spending or Lobbying, Fortune 250, 2006–14*



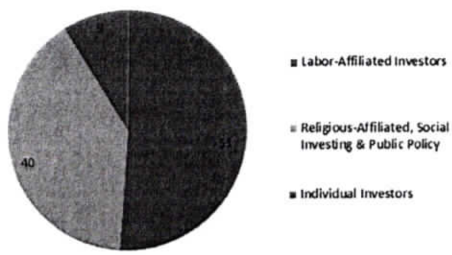
*For 2014, based on 231 companies filing proxy statements by August 31
Source: ProxyMonitor.org

- Composition of shareholder proposals has shifted from those focused solely on political spending to those focusing on lobbying:
  - 2012: 36% lobbying
  - 2013: 48% lobbying
  - 2014: 51% lobbying

PROXY MONITOR

A Majority of Political Spending and Lobbying Shareholder Proposals Are Sponsored by Labor-Affiliated Investors or Socially Focused Institutional Investors

Figure 13. Percentage of Political-Spending or Lobbying Shareholder Proposals by Sponsor, Fortune 250, 2014*

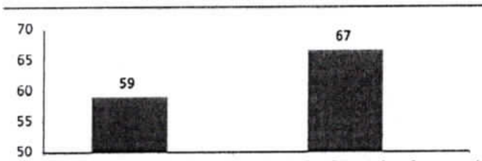


Source: ProxyMonitor.org
*219 of 250 companies reporting

PROXY MONITOR

Labor-Affiliated Sponsors of Shareholder Proposals Have Focused on Companies with Higher PAC Support for the GOP

Figure 18. Percentage of Federal Political Contributions Supporting Republicans, Fortune 250, 2011–12 Election Cycle



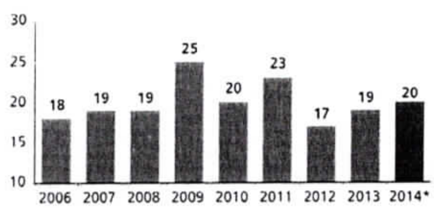
*Based on 231 companies filing 2014 proxy statements by August 31
Source: ProxyMonitor.org; Center for Responsive Politics

Among the 43 Fortune 250 companies facing 2014 shareholder proposals sponsored by labor-affiliated investors, the executives and PACs of only five contributed more money to Democrats than to Republicans in the prior political cycle—and only one of those faced a proposal related to political spending or lobbying.

PROXY MONITOR

The Overwhelming Majority of Shareholders Continue to Reject Proposals Related to Political Spending or Lobbying

Figure 9. Average Shareholder Vote per Shareholder Proposal Related to Political Spending or Lobbying, %, Fortune 250, 2006–14*



*For 2014, based on 226 companies holding annual meetings by August 31
Source: ProxyMonitor.org

- From 2006–14, between 75 and 83 percent of shareholders have voted against such proposals
- No shareholder proposal related to corporate political spending or lobbying received the support of a majority of shareholders over board opposition at a Fortune 250 company

PROXY MONITOR